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RICHARD B. BELLING  
CLERK  
U.S. DISTRICT COURT  
NO. DIST. OF CA. S.J.

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

GARY KREMEN,

Plaintiff,

v.

STEPHEN MICHAEL COHEN, et al.,

Defendant.

NO. C 98-20718 JW

**ORDER MAINTAINING WRIT  
OF ATTACHMENT ON  
ANCILLARY COMPLAINT AND  
DENYING MONTANO  
PROPERTIES, LLC'S MOTION  
TO DISMISS FOR LACK OF  
SUBJECT MATTER  
JURISDICTION**

Docket No. 577

This matter came on for hearing on April 2, 2001 on the Order to Show Cause re: maintaining the writ of attachment previously issued by this Court. Ancillary Defendant, Montano Properties, LLC ("Montano"), also filed a Motion to Dismiss Ancillary Complaint for Lack of Subject Matter Jurisdiction on March 21, 2001. James M. Wagstaffe appeared for Ancillary Plaintiff Gary Kremen, Robin Offner appeared for Montano Properties, LLC.


Montano challenges the writ on two grounds: (1) that the Court does not have subject matter jurisdiction over the ancillary complaint; and (2) that the writ cannot issue due to failure to follow procedural requirements. Montano conceded during the hearing that the Court would have jurisdiction if the complaint only asserted remedies based on disgorgement of the properties that were allegedly fraudulently conveyed. In response, Kremen represented that, as to Montano, he seeks only remedies based on disgorgement of the properties (and related claims for determination of

1 alter ego status for purposes of tracing property or assets, and claims imposing constructive trust on  
2 such property or assets, etc.) and agreed to amend the ancillary complaint accordingly. Kremen  
3 indicated that the amended complaint would be filed on April 3, 2001. In view of Kremen's  
4 amendment of the complaint, there remains no dispute that this Court has subject matter jurisdiction  
5 over this ancillary action.

6 Montano also contends that the writ is improper for failure to follow procedural  
7 requirements. The Court finds that, in view of the record and the manner in which the attachment  
8 issue was raised, as well as the Court's inherent authority, the previously issued writ satisfied the  
9 applicable requirements for issuance of such relief. The Court specifically finds that there was and is  
10 ample basis for the issuance of such relief on an emergency basis. To the extent that a deficiency  
11 may have existed in Plaintiff's failure to post a bond, that inadequacy is now cured by the attached  
12 bond in the amount of \$7,500.00. The Court further finds that Kremen has demonstrated a strong  
13 likelihood of success on the merits, and that Montano has had sufficient notice and an opportunity to  
14 be heard. The previously issued writ of attachment shall therefore be maintained until trial of the  
15 ancillary complaint.

16 Finally, in view of Kremen's representation to the Court and his anticipated amendment of  
17 the complaint, and Montano's concession that the Court has jurisdiction over the claims related to  
18 fraudulent conveyance, Montano's pending Motion to Dismiss is rendered moot. That motion is  
19 therefore DENIED and taken off calendar.

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21  
22 Dated: April 2, 2001

  
JAMES WARE  
United States District Judge

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**United States District Court**

For the Northern District of California

**THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN MAILED TO:**

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Dated: 4/2/01

Richard W. Wieking, Clerk

By: 

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Courtroom Deputy